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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,501	12/19/2001	Joseph S. Wycech	M 6385A	9344
423	7590	05/04/2004	EXAMINER	
HENKEL CORPORATION THE TRIAD, SUITE 200 2200 RENAISSANCE BLVD. GULPH MILLS, PA 19406			VO, HAI	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/026,501	WYCECH, JOSEPH S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hai Vo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19,22-24,28-41 and 44-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19,22-24,28-41 and 44-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 19, 22-24, 28, 29, and 44-46 are rejected under 35 U.S.C. 112, first paragraph, because the disclosure does not enable one skilled in the art to make the invention as claimed without undue experimentation. The claim recites the paint read-through control structure comprising a pattern of holes creating open passageways completely through the laminate and said pattern of holes being a plurality of rows and a plurality of columns with a plurality of the holes in each the rows and in each of the columns. The specification does not disclose the size of the hole and the distance separated between the adjacent holes to enable any person skilled in the art to make a pattern of holes that is sufficient to function as a paint read-through control structure as recited in the claims.

***Claim Objections***

3. Claim 24 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 22. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-19, 22-24, 28-41 and 44-46 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,372,334 substantially as set forth in the 12/01/2003 Office Action. Although the Associate Power of Attorney has been received to certify the attorney or agent of record, is authorized to sign a terminal disclaimer, submission of a second terminal disclaimer is still required for review so as to obviate the double patenting rejections.

#### ***Claim Rejections - 35 USC § 102***

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 37 and 39-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller et al (US 5,215,796). Mueller teaches a bath tub comprising a top layer of thermoset polyester resin 20, a supporting layer comprised of high density

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polyurethane foam 30 underneath the top layer, and a bottom layer comprised of relatively low density polyurethane foam 40 beneath and in surface -to- surface contact with supporting layer. Mueller teaches that all of resinous layers have been applied and cured on the mold (column 2, lines 50-68, column 3, lines 1-9). Figure 6 of Mueller shows that the bath tub in its elevation view having a pair of longitudinal side edges interconnected by a pair of transverse end edges, and at least one of pair of side edges and the pair of end edges being of non-straight and undulated shape. Muller does not specifically disclose the relatively low density polyurethane foam functioning for absorbing shrinkage. It appears that the laminate of Muller meets all the structural limitations as required by the claims. The laminate comprises a carrier layer, a rigid foam, a compliant foam and the edges having a structure as recited in the claims. The laminate is prepared by molding, the same procedure as described in the present invention. It is not seen that the relatively low density foam of Mueller would have performed differently than the claimed compliant foam in terms of shrinkage absorption. It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete. It is the examiner's position that Muller anticipates the claimed subject matter.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 19, 22-24, 28 and 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura et al (US 4,128,683). Nomura teaches an auto ceiling panel comprising a vinyl chloride sheet 4, a first polyethylene foam 2, a metal lath 1, and a second polyethylene foam 3. The first polyethylene foam and the vinyl chloride sheet are provided with a plurality of small holes through two layers while the second polyethylene foam is provided with a plurality of through holes with a diameter larger than that of the small holes (see figure 1). Normura also teaches that at least one of the small holes overlapping the larger hole becomes through one (figure 1, column 2, lines 35-36). The auto ceiling panel has a pair of longitudinal side edges interconnected by a pair of transverse end edges wherein at least one of the pair of side edges and end edges have a pattern of hills and valleys joint together to be non-straight and undulated (figures 2 and 5). Mere recitation "the paint read through control structure" is related to the functional language. The product claims must be structurally distinguishable from the prior art. While features of a product may be recited either structurally or functionally, claims directed to a product must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Further, it appears that the auto ceiling panel of Nomura comprises a plurality of holes as described in Applicant's specification. It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete. It is not seen that the auto ceiling panel of Nomura would have performed differently

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than the claimed reinforcement laminate in terms of paint read-through control structure. Figure 1 shows that the distance between the adjacent holes is about the same across the length of the laminate. Nomura does not specifically teach the pattern of holes in the rows and columns as recited in the claims. It is believed that once the prior art renders obvious formation of the plurality of holes through the laminate, the orientation of such through holes is not a patentable advance but involves only routine skill in the art to ensure a good effect of sound absorption of the panel. Therefore, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the auto ceiling panel having a pattern of the through holes instantly claimed motivated by the desire to ensure a good effect of sound absorption.

10. The double patenting rejections with respect to claims 42 and 43 and the art rejections over EP 0 060 561 are considered moot in view of the cancellation of claims 42 and 43.

11. The art rejections over Wycech have been overcome by the present amendment.

Wycech does not disclose the support beam having a plurality of holes in the columns and rows as recited in the claims for sufficient performance as a paint read through control structure.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485.

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The examiner can normally be reached on M,T,Th, F, 7:00-4:30 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hai Vo

HV

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